IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 599 of 2001
(Old No. 1049 of 1989)

Govind Prasad alias Mohan
S/o Sri Bhawani Dutt
R/o Village Ghuni, Patwari Circle Farkhet
District Chamoli.

…. Appellant

Versus

The State

….. Respondent

Mr. Pankaj Purohit, learned counsel for the appellant.
Mr. Amit Bhatt, learned A.G.A. for the respondent State.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 20.04.1989, passed by learned Session Judge, Chamoli, in Sessions trial No. 03 of 1989, whereby appellant Govind Prasad @ Mohan has been convicted under Section 376 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and sentenced to undergo rigorous imprisonment for a period of three years.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that Kashi Ram (P.W.1), Shankar Dutt (husband of the victim), Jagdamba and Bashwa Nand were four brothers, who used to live in

joint family in village Ghuni in the District of Chamoli. Heera Devi (P.W.2), aged 30 years, is wife of Shankar Dutt. When the snow melts at higher altitude, during summer season, the village-men of this village, it is said used to go to the north to graze their cattle. Shankar Dutt too left his village and had gone to the Maana (a village in the Niti valley), near Badrinath Dham. His family remained in the village Ghuni. Prosecution case is that the mother-in-law of Heera Devi (P.W. 2) used to live, during summer season, in village Kanol, to look after the cattle. On 17.07.1987, Heera Devi (P.W. 2) got a message from her mother-in-law that she needed ration to meet out her daily needs. As such, after completing the household work, at about noon, Heera Devi left for village Kanol with ration for her mother-in-law. She was going on foot through jungles. When she had gone about three kilometers from her village, accused / appellant Govind Prasad @ Mohan Stopped her. It is said that the accused was armed with "THAMALI' (Sickle). The accused took Heera Devi to the jungle and committed rape on her. It is alleged that Heera Devi cried for help, but in vain. Heera Devi came down crying back to her village Ghuni and disclosed to her brother-in-law Kashi Ram (P.W. 1), what had happened with her on her way to village Kanol. Kashi Ram got the first information report (Ext. A –1) typed on 18.07.1987, got medically examined Heera Devi and, thereafter, submitted the same to the magistrate on 20.07.1987. The Magistrate on said date directed the Patwari to register the crime and investigate the same. (In Uttarakhand hills, in certain areas, Revenue officers are given police powers).

However, the Investigation Officer P.W. 4 Bishram Singh, on completion of investigation, found no evidence against the accused to file the charge sheet, as such, he submitted the final report (Ext. A –5) in the case. On the final report, it appears that learned Magistrate took cognizance and summoned the accused. The magistrate, after giving necessary copies to the accused, committed the case to the court of sessions, for trial.

4) Learend Sessions Judge, after hearing the prosecution and the defence, framed charge of offence punishable under Section 376 of I.P.C. against the accused Govind Prasad @ Mohan, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Kashi Ram (informant and brother-in-law of the victim); P.W. 2 Heera Devi (the victim); P.W.3 Rithuwa and P.W. 4 Patwari Bishram Singh (the Investigating Officer). The oral and documentary evidence, was put to the accused under Section 313 of Cr.P.C., in reply to which the accused alleged that he has been falsely implicated in the crime due to enmity. He further stated that since Kashi Ram's sister-in-law lives with him, as such, Kashi Ram and their family members have enmity with him. In this connection, he has further alleged that earlier also he was dragged by the complainant's family in proceedings under Section 107 / 116 of Cr.P.C. However, no evidence in defence was adduced on behalf of the accused. The trial court, after hearing the prosecution and the defence, found accused / appellant Govind Prasad @ Mohan guilty of charge of offence punishable under Section 376 of I.P.C., and after hearing on sentence, sentenced him to rigorous

imprisonment for a period of three years. Aggrieved by the judgment and order dated 20.04.1989, convict Govind Prasad @ Mohan preferred this appeal before the Allahabad High Court, from where it is received by transfer to this Court under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) Before further discussions, it is pertinent to mention about the medical report (Ext. A-6) produced on behalf of the prosecution. This repot is titled as private medico-legal report. No affirmative opinion has been given in this report as to the commission of rape with Heera Devi. The Medical Officer has observed in said report – no injury in internal side, no swelling, hymen absent, pubic vulva admits to fingers of hand easily. As such, this report is of no help to the prosecution.

6) Now, this Court has to examine whether, the charge of offence punishable under Section 376 of I.P.C., is proved or not against accused / appellant, from the statements of the witnesses examined on behalf of the prosecution, or not?

7) P.W. 1 Kashi Ram is brother-in-law of Heera Devi. He is the person, who lodged the first Information report (Ext. A –1) against accused / appellant Govind Prasad @ Mohan. Narrating the prosecution story, this witness has stated that it was rainy season, when at about 10:00 A.M., his sister-in-law (wife of Shankar Dutt) had gone with ration to village Kanol to deliver the same to her mother-in-law. According to this witness, Heera Devi, at about 05:00

P.M. returned home crying that she has been raped by accused Govind Prasad @ Mohan, on the way.

8) P.W. 2 Heera Devi (the victim), wife of Shankar Dutt, has stated that on the day of incident, she had gone to deliver ration to her mother-in-law in village Kanol. The witness states when she had gone three kilometers from her village Ghuni towards village Kanol, accused Govind Prasad @ Mohan, a resident of her village, armed with Sickle, met her and raped her. On seeing this prosecution story plainly, it appears to be natural one, but on close scrutiny, after going through the cross-examination of the witnesses, the same appears to be doubtful. It has come in the statements of the witnesses that Kashi Ram and Shankar Dutt had another brother Jagdamba, in their family and the name of Jagdamba's wife is also Heera Devi (not P.W. 2). It is said that about a year before that Heera Devi had eloped with accused Govind Prasad @ Mohan and she now lives with him. Naturally, this must have caused enmity between the two families. Not only the witnesses P.W.1 Kashi Ram and P.W. 2 Heera Devi have affirmed the fact that another Heera Devi was living with Govind Prasad @ Mohan, but accused / appellant himself in his statement under Section 313 of Cr.P.C. , has alleged the same that due to this enmity he has been falsely implicated in the present case. In reply to question No. 15, put to him under Section 313 of Cr.P.C., accused / appellant has said that Jagdamba's wife is living with him (Govind Prasad @ Mohan) at her own will. The accused has further alleged that not only in the present case but he has also been dragged in proceedings under Section 107 / 116 of Cr.P.C. due to said

enmity by the family members of Jagdamba Prasad. This factum creates a reasonable doubt in the prosecution story, narrated by the prosecution witnesses.

9) Apart from this, there are contradictions in the statements of the witnesses, which create further doubt in the prosecution story. P.W. 1 Kashi Ram says that the victim left village Ghuni, at 10:00 A.M., while P.W. 2 Heera Devi says she left her hosue after 02:00 P.M. P.W. 1 Kshi Ram states that husband of Heera Devi returned home from Maana after one month of the incident but P.W. 2 Heera Devi states that her husband returned home after two months of the incident. It is strange that the husband of Heera Devi (P.W. 2) was not informed for a month about the incident that had taken in the village. Village Maana is also in the same District of Chamoli, where he had gone to graze his cattle, during summer season.

10) The statements given to the Investigating Officer, which were recorded under Section 161 of Cr.P.C., are also contradictory to what the witnesses have stated in the court. Name of P.W. 3 Rithuwa, who has stated that he also saw Heera Devi coming down to the village does not figure in the complaint/ Report (Ext. A –1).

11) In view of the enmity between the parties, due to the fact that wife of Jagdamba Prasad (brother of the complainant) was living with the accused Govind Prasad @ Mohan, and after considering the material contradictions and alleged previous litigation under Section 107 / 116 of

Cr.P.C., this Court is of the view that the charge of offence punishable under Section 376 of I.P.C. can not be said to have been proved beyond reasonable doubt as against the accused / appellant, and as such, in the opinion of this Court, the trial court has committed error of law in convicting the accused / appellant under Section 376 of I.P.C.

12) Therefore, the appeal is allowed. Conviction and sentence recorded by the trial court against the accused / appellant under Section 376 of I.P.C. is hereby set aside. The accused / appellant Govind Prasad @ Mohan is acquitted to the charge of offence punishable under Section 376 of I.P.C. The appellant Govind Prasad @ Mohan is on bail. He need not to surrender. His bail bonds are cancelled and sureties stand discharged.

(Prafulla C. Pant, J.)

Dt. April 19, 2007.
H.Negi